No. 82-1104

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

GA TECHNOLOGIES INC. and
GENERAL ATOMIC COMPANY,

Petitioners,

v.

UNITED NUCLEAR CORPORATION,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of New Mexico

RESPONDENT'S OPPOSITION TO PETITIONERS' MOTION TO SUBSTITUTE PARTY

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February 4, 1983

Although GA Technologies Inc. is not a party to the litigation in the courts below, it has been associated with General Atomic Company (GAC) in the caption to the Petition as one of the "Petitioners," and those "petitioners" have moved that GA Technologies Inc. be substituted "in the place and stead" of GAC "and be permitted to proceed as a petitioner in this proceeding." The grounds for the motion are that GAC, a party to a contract and arbitration awards involved in the underlying litigation, has "transferred essentially all of its business, including, inter alia, its contracts with United Nuclear Corporation [UNC] and the arbitration awards involved in this case to GA Technologies Inc., a newly formed California corporation wholly owned by Gulf Oil Corporation."[1/] GAC's representation does not justify granting the motion.

First, the Rules of this Court -- unlike the Federal Rules of Civil Procedure and of Appellate Procedure -- do not authorize a motion to substitute parties because of a transfer of interest. Rule 40 authorizes a motion to substitute only when a party has died, Rule 40.1, and when a public officer "here in his official capacity dies, resigns, or otherwise ceases to hold office," Rule 40.3.[2/]

1/ GAC is a partnership whose constituent partners are Gulf Oil Corporation and Scallop Nuclear Inc., a subsidiary of the Royal Dutch-Shell Group. Pet. at 1 n.1.

2/ By contrast, Rule 25(c), Fed. R. Civ. P., specifically provides: "In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party" (emphasis added). See also Rule 43(b), Fed. R. App. P. A transferee of interests has no automatic right to substitution under Rule 24(c), Fed. R. Civ. P. The matter is committed to "the sound discretion of the trial court." 3B Moore's Federal Practice ¶ 25.08 at 25-78 (2d ed. 1982); 7A Wright & Miller, Federal Practice and Procedure § 1958 at 664-65 (1972). See, e.g., Prop-Jets, Inc. v. Chandler, 575 F.2d 1322, 1324 (10th Cir. 1978).

Second, even assuming that this Court may have the inherent power to substitute parties in appropriate cases (cf. 28 U.S.C. § 1651), GAC has not demonstrated that substitution is appropriate in this case. The motion does not assert that GAC has been dissolved or is no longer in existence. While the motion asserts that by reason of the transfer to which it refers, GA Technologies Inc. has become "the party in interest," GAC has not supplied the Court with the agreement in question, quoted or described the pertinent provisions, or demonstrated that GAC has ceased to be a party in interest. We are informed and believe that the transfer agreement does not even purport to relieve GAC of its liabilities and obligations for acts occuring prior to the October 1982 transfer. GAC is subject to the judgment below vacating the arbitration awards. Moreover, UNC currently has valid New Mexico judgments, awarding damages and other relief against GAC, which were entered in the litigation invalidating the 1973 Supply Agreement. (See Brief for Respondent in Opposition at 9; Ex. 19; Second Amended Final Judgment, May 17, 1978.) Accordingly, it cannot be determined from the representations in the motion that the substitution of GA Technologies Inc. for GAC -- that is, elimination of GAC as a party -- would not impair UNC's rights under its existing judgments.

Third, the motion does not assert that the interest of GA Technologies Inc. will be less than fully represented by GAC in this Court. Indeed, the traditional rule is that "a pendente lite assignment carries with it an implied license by the assignor for the use of his name in the cause by the assignee to protect the rights assigned," 1 C.J.S., Abatement and Revival § 107 (1936). Nothing in the motion suggests that that rule does not apply and does not fully protect GA Technologies Inc.

Compare Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 407-08 (1964), where the court denied a motion to substitute a party because, inter alia, it had been "permitted as amicus to brief and argue its position. In these circumstances we are not persuaded that [its] admission * * * as a party is necessary at this stage to safeguard any claim either that it has already presented or that it may present in the future course of this litigation."

For the foregoing reasons, the motion to substitute GA Technologies Inc. as a party should be denied.

Respectfully submitted,

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